



State of Washington
PUBLIC DISCLOSURE COMMISSION

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M E M O R A N D U M

TO: Members, Public Disclosure Commission

FROM: Susan Harris, Assistant Director

DATE: February 16, 2004

SUBJECT: Pat Mooney 2003 Campaign for Anacortes Port Commissioner
PDC Case No. 04-310

LAW

RCW 42.17.040 requires any material change in information previously submitted in a statement of organization (PDC form C-1) to be reported to the commission and to the appropriate county elections officer within ten days following the change.

RCW 42.17.080 requires the treasurer or candidate to maintain books of account accurately reflecting all contributions and expenditures on a current basis within five days, except that during the eight days preceding an election, they must be kept current within one business day.

RCW 42.17.080 and 42.17.090 require candidates to file reports of contributions and expenditures. The reports must be timely, complete, and accurate.

WAC 390-16-105 states that a candidate is not required to comply with the provisions of RCW 42.17.060 through 42.17.090 except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 as long as the campaign stays under the limits of the mini reporting option which are \$3,500 in aggregate contributions or expenditures and \$300 in contributions from any one person except the candidate.

WAC 390-16-125 sets forth how a candidate may apply to the commission for authorization to change reporting options. It also states that any person who knowingly or negligently causes or permits the limitations specified in these regulations to be exceeded shall be deemed to have violated the applicable provisions of RCW 42.17.040 - 42.17.090.

FACTS

Pat Mooney filed a candidate registration form (PDC form C-1) on August 7, 2003 to become a candidate for re-election to the office Port Commissioner, District 4, for the Port of Anacortes in the November 4, 2003 general election. Mr. Mooney selected Option I, the mini reporting option. By selecting the mini reporting option, Mr. Mooney agreed to accept no more than \$3,500 in contributions, to accept no more than \$300 from any person other than himself, and to limit expenditures to no more than \$3,500, not including his filing fee of \$24. The Mooney campaign raised a total of \$5,379 and made expenditures totaling \$4,944. Of the total raised, Mr. Mooney contributed \$4,327 of his own money. Mr. Mooney's opponent, Brian Wetcher, also chose the mini reporting option and was defeated by Mr. Mooney by 21 votes out of 6,617 votes cast.

Three complaints were filed, including a "*45-Day Citizen Action Letter*" filed under RCW 42.17.400(4) alleging that Mr. Mooney exceeded the mini reporting limits, in violation of RCW 42.17, and that his failure to adhere to the limits probably affected the outcome of the election.

Immediately prior to October 9, 2003, Mr. Mooney's campaign expenditures totaled \$2,750. On October 9th, Mr. Mooney ordered 70 radio ads to run from October 15th through November 3, 2003 at a cost of \$1,050. This order obligated his campaign to spend \$3,780, exceeding the \$3,500 limit under the mini reporting option.

At this point, on October 9th, Mr. Mooney was required, pursuant to WAC 390-16-125, to notify PDC and seek permission to exceed the mini reporting threshold. He was also required to file all

appropriate reports and notify his opponent of the fact that he had exceeded the mini reporting threshold. Mr. Mooney did nothing.

If a request to exceed the mini reporting option is received more than 30 days prior to an election, the request is automatically granted. If the request is made within 30 days of an election, PDC's Executive Director may authorize a candidate to exceed the mini reporting limits if, after investigating, it is determined that the "probability of exceeding such limitations were [not] reasonably foreseeable." WAC 390-16-125.

Mr. Mooney had exceeded these limits within the 30 days of the election and before he contacted PDC staff. Had Mr. Mooney notified Mr. Wetcher that he had exceeded these limits, Mr. Wetcher could have requested that he be allowed to exceed the mini reporting threshold. Based on the fact that Mr. Mooney had already exceeded the threshold, Mr. Wetcher's request most likely would have been granted because it was not "reasonably foreseeable" that his need to exceed limits existed, and he would have been able to raise and spend more money.

On October 15th, Mr. Mooney incurred additional expenditures by paying \$367 for mailing and postage. He also incurred a \$627 debt for mailing and postage costs. His total expenditures, including debts, were now at \$4,794.

On October 20th, Mr. Mooney called PDC staff for the first time and explained that he had gone over the limits of the mini reporting option. He stated that he would "*pull his money out to stay under \$3,500*" since the majority of the contributions were from his personal funds. However, the radio ads were not canceled, and on October 23, 2003, the bill for the radio ads totaling \$1,050 was paid. On October 24th, Mr. Mooney paid the outstanding \$627. Mr. Mooney acknowledged that PDC staff advised him to notify his opponent during the telephone conversation. Mr. Mooney failed to do so.

Mr. Wetcher said that on October 26, 2003, after a candidate forum, he spoke with Mr. Mooney about the apparent large amount of money being spent by the Mooney campaign. Mr. Wetcher

said Mr. Mooney personally assured him that he was a committee of one who did not have the time to go out and raise anywhere near \$3,500. According to Mr. Wetcher, Mr. Mooney said he would have no trouble meeting the mini reporting limits. Mr. Mooney acknowledges that he spoke with Mr. Wetcher on October 26th after the candidate forum, but said he could not remember saying he would be able to stay under the mini reporting limits. Mr. Mooney acknowledged that he should have informed Mr. Wetcher on October 26th that he had gone over the limit, but that “*dealing with Mr. Wetcher was uncomfortable.*”

On October 27th, Mr. Mooney contributed an additional \$1,200 to his campaign, and on October 28th and November 6th, he accepted contributions totaling \$400.

On October 28, 2003, Mr. Mooney again contacted PDC staff and explained his problem of having exceeded the limits of mini reporting. Mr. Mooney was asked to file disclosure reports for all campaign activities along with a letter explaining why the limits had been exceeded. On October 31st, Mr. Mooney filed reports of contributions and expenditures, and on November 11th, he submitted a letter of explanation along with a new C-1 form requesting to change to the full reporting option. Mr. Mooney was told by PDC staff that his request was not appropriate because it was made after the election.

Mr. Mooney acknowledged that he exceeded the limits of the mini reporting option, but denied that his violation was intentional. He said it was due to negligence and an overwhelming workload of business, community, civic and family responsibilities. Mr. Mooney said that when he discovered he had exceeded the mini reporting limits, he was already contractually obligated to pay for the radio ads ordered on October 9th for \$1,050. Mr. Mooney said that at the start of the campaign he did not expect to spend over \$3,500, but when a sitting Port Commissioner began campaigning for Mr. Wetcher, he decided to spend more on advertising than originally planned. He acknowledged that he failed to maintain current expenditure records and thus lost track of how much he had spent.

Mr. Wetcher claimed that his campaign had declined additional contributions because those contributions would have put his campaign over the \$3,500 mini reporting threshold. He believes that had he been able to collect and spend additional funds, he would have been able to sway 11 voters to vote for him by purchasing more radio, television ads and direct mail advertising.

CONCLUSION AND RECOMMENDATION

Pat Mooney selected the mini reporting option when he filed his candidate registration statement on August 7, 2003. By choosing the mini reporting option, Mr. Mooney agreed to accept no more than \$3,500 in contributions, to accept no more than \$300 from any person other than himself, and to limit expenditures to no more than \$3,500, not including his filing fee. Mr. Mooney accepted contributions from himself and others totaling \$5,380 and made expenditures totaling \$4,944.

Pat Mooney's opponent, Brian Wetcher, also selected the mini reporting option. He abided by the option selected, thus limiting his spending to \$3,500. On October 20, 2003, Mr. Mooney called the PDC and said he would "*pull his money out to stay under \$3,500*" since the majority of the contributions were from his personal funds. This did not happen. Instead, Mr. Mooney continued to raise and spend money.

Mr. Mooney failed to cancel the radio advertisements that caused him to exceed the mini reporting threshold. Mr. Mooney then failed to notify PDC, failed to file the appropriate campaign reporting forms and failed to notify his opponent of his request to exceed the mini reporting threshold. With one week to go in the election, following a candidate forum, Mr. Mooney acknowledged that he talked with Mr. Wetcher, but again failed to inform Mr. Wetcher that he had exceeded the mini reporting limit by spending \$4,167.

Mr. Mooney defeated Mr. Wetcher by 21 votes out of 6,617 votes cast. Because Mr. Wetcher was denied information about Mr. Mooney's over spending, he was not given an opportunity to match Mr. Mooney's spending during the final weeks of the election.

Based on the facts specified above, staff recommends that the Commission find multiple apparent violations of RCW 42.17 and chapter 390 WAC by Pat Mooney: (1) by failing to change to the full reporting option prior to October 9, 2003, violating RCW 42.17.040; (2) for accepting contributions totaling \$5,380 and making expenditures totaling \$4,944 without timely filing the proper campaign reports, violating RCW 42.17.080 and 42.17.090; (3) by failing to keep accurate and timely campaign records, violating RCW 42.17.080; and (4) by exceeding the mini reporting threshold in violation of WAC 390-16-125 without first (a) seeking and being granted permission, (b) filing reports and (c) notifying his opponent. Based on these findings and its limited penalty authority, the Commission is urged to refer the matter to the Office of the Attorney General for appropriate action.